



WISCONSIN REGULATORY DIGEST

A Publication of the
DEPARTMENT OF REGULATION AND LICENSING FOR
CEMETERY AUTHORITIES, CEMETERY SALESPERSONS AND PRENEED SELLERS
Volume 4, No. 2 September, 1997

Petition For Declaratory Judgment Concerning Joint Ownership

The Honorable Robert R. Pekowsky, Circuit Judge, Branch 5, issued a decision in regard to this matter on April 16, 1997. The conclusion in the judge's decision states: "Plaintiff's arguments are unpersuasive and cannot be supported by current law, the facts presented, or reasonable interpretations of the 1989 Wisconsin Attorney General's opinion. The creation of SCI as a level of separateness between the subsidiaries in Wisconsin and the control of SCI is insufficient to bring Plaintiffs within the requirements of the law. For the above stated reasons, summary judgment is granted for the Defendants. Plaintiffs, through their parent corporation, Service Corporation

CEMETERY ADVISORY COMMITTEE

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International, and its subsidiaries, are hereby found to violate secs. 157.067 and 445.12 (6), Stats."

Actions of the Cemetery Advisory Committee

The last meeting of the Cemetery Advisory Committee was on May 7, 1997. The committee discussed the definition of lawn crypts, the history of the use of lawn crypts, the construction of lawn crypts and how the cost of lawn crypts and vaults impacts on the assessment of costs for indigent burials. At least one or two more meetings will be needed to review this issue and the remaining issues which were listed in earlier editions of the Regulatory Digest. We do not anticipate that any of these issues will be included in any remaining legislative requests of the Department for the 1997-98 Legislature; however, that does not mean that some or all of the issues will not be addressed in the future.

Abandonment of Cemeteries

The Department and the Cemetery Advisory Committee have been involved in discussions about whether the statutes relating to abandonment of a cemetery should be changed. The current statutes state that a municipality **may** take control of a cemetery if a cemetery authority fails to care of the cemetery for a period of one or more years. However, if a cemetery authority abandons or fails to manage or care for a cemetery for a period of 5 or more years, a municipality **must** take control of the

cemetery. A town must also take control of an abandoned cemetery.

A few municipalities have expressed concern about the impact of these laws on them. Several alternatives were discussed, such as creating a trust fund by assessing a fee for that purpose when issuing a death certificate, such as assessing a one-time fee on all registered cemetery authorities, or such as assessing a one-time fee on all cemeteries (including non-profit and religious cemeteries). Other suggestions were that a surcharge be imposed on the purchase of new plots and crypts, and the money being placed in a trust fund.

No decisions have been made about how to resolve the concerns of municipalities. At the time of preparing this issue of the Regulatory Digest no bill has been introduced in the Legislature.

Changes in Fees

The Budget Bill proposes the following fee changes which would apply to cemetery authorities, cemetery salespersons and preneed sellers:

Original registration fee - increase from \$39 to \$41.

Renewal of cemetery authority - decrease from \$372 to \$342.

Renewal of cemetery salesperson - increase from \$65 to \$89.

Renewal of preneed seller - increase from \$59 to \$60.

Passage of the Budget Bill has taken longer than usual; however, the new fees will probably be in effect about the time you are reading this article or shortly thereafter.

Other Legislation

AB-515 and SB 292. These companion bills would prohibit sellers of an insurance-funded or trust-funded burial agreements from using telephone solicitations. While this bill came out of discussions relating to proposed rules of the Funeral Directors Examining Board, the bill

does contain provisions that affect cemetery authorities, cemetery salespersons and preneed sellers. The bills would prohibit any person from soliciting by telephone the sale of cemetery lots, developed or undeveloped mausoleum spaces or cemetery merchandise. The bills would also prohibit any person from using the telephone to solicit a contract in which an insurer agrees to pay for funeral merchandise or services or cemetery merchandise. Finally the bill would prohibit any person from using the telephone to solicit a life insurance policy that the seller represents as a burial or funeral insurance policy, preneed policy or any other policy in which the proceeds are primarily intended to pay for funeral merchandise or services or cemetery merchandise.

AB-505. This bill has provisions for reburial of unknown human remains erroneously removed from a burial site by a cemetery authority. This bill would require that, if a cemetery authority erroneously removes the human remains of an unknown deceased person from a grave and there is no record of the deceased person in the cemetery authority's written record, the cemetery authority must rebury the remains as close as possible to the place where the remains were removed. The bill also lists several things that a cemetery authority must or need not do in these situations.

Sale of Cemeteries and Funeral Homes

The Loewen Group International, Inc., has made a number of moves to sell funeral homes and to purchase cemeteries in Wisconsin.

The Department has recently approved the sale of the following 4 Wisconsin cemeteries to the Loewen Group: Roselawn Memorial Park in Monona, Greenlawn Memorial Park in Sheboygan, Greenlawn Memorial Park in Neenah and Ledgeview Memorial Park in Fond du Lac. Two additional requests for approval of sale are being reviewed by the Department at this time.

We would like to remind you that the Department must approve the sale, transfer or encumbrance of all or a portion of any

Wisconsin-registered cemetery before the sale, transfer or encumbrance becomes effective.

As for funeral homes, the Funeral Directors Examining Board agreed to grant funeral establishment licenses to 18 funeral homes after The Loewen Group International, Inc., sold any interest that it had in them to Charon, Inc. The following funeral homes were issued new licenses under Charon, Inc.: Murray Community Funeral Home in Beaver Dam, Murray Community Funeral Home in Horicon, Murray Community Funeral Home in Reeseville, Medema-Gove Community Funeral Home in Randolph, Kohls Community Funeral Home in Waupun, Goodman-Bensman Funeral Home in Milwaukee, Goodman-Bensman Funeral Home in Whitefish Bay, Thomas Hansen & Sons Funeral Home in Kenosha, Lendman-Mischler Funeral Home in Kenosha, Skubal-Slattery Jelenc Funeral Home in West Allis, Overton Funeral Home in Janesville, Fedderly-Axtell Community Funeral Home in Wisconsin Dells, Port Axtell Community Funeral Home in Portage, Edwardson-Axtell Community Funeral Home in DeForest, Acklan Funeral Home in Racine, Laemmrich Community Funeral Home in Menasha, Schauer & Schumacher Funeral Home on Monroe Street in Green Bay, and Schauer & Schumacher Funeral Home on Fisk Street in Green Bay.

Revised Administrative Rules

On August 1, 1997, several technical, minor changes were made to Chapters RL 50 through 54 of the Wisconsin Administrative Code. Two changes were, however, more significant. One of these was the elimination of the \$40 annual report filing fee which cemeteries and preneed sellers were required to pay in the past. Another change was the elimination of the need to have an applicant's signature notarized on an application for approval of a warehouse and an application for approval to change the financial institution in which a cemetery authority keeps a care fund. All of the changes were shown in the rule draft which was published in the last issue of the Regulatory Digest.

Opening and Closing Fees

During the past year or so there have been a number of complaints about opening and closing fees. It appears that consumers are not always clear about whether the fees are included in the cost of a lot or a mausoleum space or whether the fees can change at a future date. Clear disclosures about these matters can head off many misunderstandings and the need to file complaints with the Department.

Statistics

The current number of registrants is as follows:

Cemetery authorities	68
Cemetery salespersons	206
Preneed sellers	231
Warehouses	7

Complaints against registrants

January 1, 1997 to September 15, 1997 - 19

Open investigations - 27

Cemeterians Acting As Funeral Directors

As you know, the law prohibits joint ownership of cemeteries and funeral homes. It is also illegal for a cemetery authority, cemetery salesperson or a preneed seller to tell the public when selling lots or cemetery merchandise that they represent a funeral home. Has false representation been a problem? That's what the Joint Committee For Review of Administrative Rules asked at a hearing on July 1, 1997. The committee requested that Secretary Marlene Cummings investigate this issue and report back to the committee. The investigation showed that there was at least one complaint containing an allegation of misrepresentation. One cemetery had distributed a casket price list which referred to the cemetery as a "funeral establishment"; however, the document was an internal document which had been formatted from a funeral establishment document and the

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Address Correction Requested

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cemetery had failed to remove the words
“funeral establishment.”

The report concluded that misrepresentation
does not appear to be a problem of an especially
serious nature.

New Telephone System

The Division of Business Licensure &
Regulation has installed a new menu telephone
system which is designed to more efficiently
direct the caller to the appropriate section. It
has had some “bugs” and we apologize for that;
however, we will keep fine-tuning it so that you
will receive good service. The new telephone
number for licensing staff is:

(608) 266-5511

After dialing this number you are asked to press
1, 2, 3 or 4. For the following requests, please
press numbers as noted:

Application Forms	Press 1, then Press 1
Complaint Against Licensees	Press 1, then Press 2
Verification of Licensure & Name/Address Changes	Press 2, then Press 1
Application Processing & Requirements	Press 4, then Press 4, then Press 1

Wisconsin Statutes and Code

Copies of the Wisconsin Statutes and
Administrative Code can be ordered from the
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number of copies and a check payable to the
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